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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,135	09/08/2003	Harold M. Aznoian	B0751/7024	5402
22832	7590	08/30/2006	EXAMINER	
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP STATE STREET FINANCIAL CENTER ONE LINCOLN STREET BOSTON, MA 02111-2950			KASZTEJNA, MATTHEW JOHN	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/658,135	AZNOIAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Matthew J. Kasztejna	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 June 2006.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 2-23 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 2-23 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 28 February 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/15/06.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Notice of Amendment***

In response to the amendment filed on June 15, 2006, amended claims 4 and 10 and new claims 13-23 are acknowledged. The current rejections of the claims are *withdrawn*. The following new grounds of rejection are set forth:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2-23 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0208209 to Gambale et al.

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

**In regards to claims 2-4, 9, 12, 13-16 and 21,** Gambale et al. disclose an integrated endoscope and medical treatment accessory comprising: an endoscope shaft

having a treatment accessory integrated at its distal end, wherein the treatment accessory further comprises a tissue apposition device 50 comprising at least one suction port 86 and at least one needle 80 longitudinally slidable through the accessory to penetrate tissue aspirated into the suction port (See Fig. 6); at least one accessory control element extending through the length of the endoscope; and an accessory control mechanism mounted at the proximal end of the endoscope (see paragraph 0103). The apparatus of Gambale et al. is capable of performing the recited method claims (see paragraphs 0105-0109).

**In regards to claims 5 and 17,** Gambale et al. disclose an integrated endoscope and medical treatment accessory, wherein the suction port further comprises a partition wall that forces aspirated tissue to form into two separate tissue mounds (see Fig. 6).

**In regards to claims 6 and 18,** Gambale et al. disclose an integrated endoscope and medical treatment accessory, wherein the treatment accessory comprises a tissue-suturing device having at least one suction port and vacuum chamber and a semi-circular needle configured to be advanced in a circular path that traverses the vacuum chamber and tissue aspirated therein (See Figs. 4-8).

**In regards to claims 7-8 and 19-20,** Gambale et al. disclose an integrated endoscope and medical treatment accessory, wherein the treatment accessory further comprises a tissue apposition device having at least one suction port and vacuum chamber having a bottom surface and an optical viewing port and air and water port are present on the bottom surface (see paragraphs 0012 and 0102-105).

**In regards to claims 10 and 22,** Gambale et al. disclose an integrated endoscope and medical treatment accessory wherein the treatment accessory further comprises a tissue apposition device having a suction port with a partial partition wall to divide tissue aspirated into the port into two portions; at least one staple oriented to be advanced through captured tissue portions and closed upon an anvil located at a distal end of the accessory, and a staple driver for advancing a staple longitudinally through the accessory and captured tissue portions (see Fig. 4-8 and paragraph 0021).

**In regards to claims 11 and 23,** Gambale et al. disclose an integrated endoscope and medical treatment accessory wherein the treatment accessory further comprises; at least one access port adjacent the distal end of the endoscope and a tissue grasping device arranged to be advanced through the access port and operated to grasp tissue and pull it through the access port into the accessory (see Fig. 6 and paragraph 0019-0022).

### ***Response to Arguments***

Applicant's arguments with respect to claims 2-12 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJK *mc*

8/24/6



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